February 20, 2006

Department of Interior
Minerals Management Service
Attention: Rules Processing Team
381 Elden Street MS-4024
Herndon, Virginia 20170-4817

Re: Alternate Energy-Related Uses on the outer Continental Shelf-1010-AD30

Dear Ms. White,

I am very pleased to offer comments on the development of a regulatory program to implement portions of the Energy Policy Act of 2005, Section 388-Alternate Energy-Related Issues on the Outer Continental Shelf. The future success of utilizing retired offshore platforms for alternative energy sources and mariculture will be dependent on a stable legal framework to transfer the platform liability from oil and gas operator to the alternative energy or mariculture user. In addition, the cost of permitting, monitoring, reporting, and platform removal responsibilities will have to be economical if the new industry is to succeed.

A legal method to terminate oil and gas operator's liability is essential. Oil and gas companies want to rid themselves of long term liability. They cannot justify perpetual liability. As suggested in the language in HR 4761 Sec. 21, MMS should create regulations that relieve oil and gas operators of all liability once they plug the wells and remove hazardous waste. The liability transfer should begin at the time the title and platform is transferred to new venture and any liability for prior action or neglect should terminate. Unless indemnification issues are satisfied, oil and gas operators will continue to remove the platforms to avoid ongoing liability.

The high cost of permitting activities on the OCS will prohibit many ventures from even starting. MMS should consider cooperating with other agencies and issue general permits. MMS should coordinate with the other agencies to simplify the process and commit to a relatively quick processing time.

Keep in mind that the offshore structures have been producing petroleum for four decades and operations have not resulted in significant environmental damages to the offshore sites. Quite the opposite, the most dangerous and environmentally damaging process in the life of an offshore platform is removing the structures with explosives. This process can destroy Essential Fish Habitat (EFH), Endangered Species Habitat (ESH) and coral and sponge communities.

The cost to operate alternative venture will be challenging regardless of what method is used to extend the life of an offshore platform. The high cost of the platform removal bond could well prohibit the economic success of many types of alternative applications. MMS needs to develop a large scale plan to encourage new ventures utilize retired platforms. It is very hopeful that MMS is revising federal regulations to allow for the reuse of retired offshore platforms. Please consider enclosed comments when drafting the new regulations

Best Regards,

Steve Kolian

Please see comments below:

Description: There are several methods authorized by the statute for providing access rights to the OCS, including leases, easements and rights of- way. All of these methods usually require certain pre-qualification measures, such as a showing of financial capability to carry out the proposed project. The MMS will require a defined schedule for action and terms and conditions to maintain the interest granted. In addition, approval may be contingent on the receipt of certain data and information.

General issues:

Please provide information on how MMS can best:
A. Provide access for resource and site assessment.
B. Issue the appropriate instrument (e.g., leases, easements, rights-of-way).
C. Solicit interest for development projects.
D. Identify terms and conditions fuse such as: Issuance. Duration. Assignment of rights. Suspensions and cancellation of rights. Limitation of rights.
E. Identify geographical areas of interest for: Resource and site assessment. Development feasibility.
F. Ensure fair competition.
G. Process permits and applications.
H. Process pre-application resource assessments.
I. Allow concurrent developments.
J. Minimize multi-use conflicts .

**Specific questions:**

2. Possible development scenarios include phased access rights, which would allow for resource and/or site assessments and research prior to securing additional access rights. This will complicate permit acquisition and deter investment banking from financing aquaculture ventures. Also phased permitting and, "research prior to additional access rights." Could make mariculture venture subject unwarranted claims by interest groups and delay Rights could be permitted on a case-by-case basis. Agree. However, make permit simple and require short turnaround time limits for processing. Development rights would be secured by a competitive process. A new alternative venture will have to spend a great deal of expenses securing a platform from a petroleum producer, This investment would be fruitless if the site is put up for auction after all the work. An alternative would be to require that interested parties secure the access rights to an area prior to conducting assessments and research. Create a general permit to enable alternative uses on retired platforms. Create a bundle of rights and provisions for the new permits. Make the process a simple, one stop permit.

Please comment on these possible options.

3. In cases where applicants or interested parties propose activities that would foreclose competing future uses, how should MMS estimate ''a fair return,'' especially if the competing uses would likely be public uses? I am not sure what a "fair return" would amount to, but let me emphasise tha alternative applications ventures will not be able to afford it.

4. What constitutes a geographical area of interest? Abundance of platforms, major shift/variations in populations of flora and fauna e.g. Louisiana. Also, variations in sediments, water quality properties, etc. Digital mapping of all the variables would be helpful.

5. What assessments should we require prior to competition? The sites have already been permitted for oil and gas, use this information to make assessment. Any Assessments should be provided by MMS. Alternative ventures will not be able to afford lengthy and costly assessments.

6. How should MMS structure the competitive process and the application process used to issue OCS access rights? Should MMS auction access rights or engage in direct negotiation? Direct Negotiation. In Central Gulf, new enterprises will be utilizing retired platforms. The availability of exhausted wells will determine the location of the permit. New enterprises will have to enter into negotiations with petroleum operator to secure the platform. Chances are the platform will remain in place. It would seem unfair to auction the access rights after all the work is done, by a single company, to secure a platform.

7. Should MMS take a broad approach to developing a program, or should efforts be targeted to specific regions? The region offshore of Louisiana should be micro managed since it possess 3600 platform and 90% of fish in Gulf of Mexico reside in the waters. This area should receive the greatest attention and funding.

8. How should MMS consider other existing uses when identifying areas for access? If

9. How should MMS balance existing uses within an area with potential wind and current energy projects? MMS should Existing uses such as "open access" should be maintained with wind energy; however, open access at current energy may prove more hazardous.

10. Should MMS require permits for collecting data from vessels? Should we consider this information proprietary? What criteria should we use for holding the information proprietary?

11. What criteria (e.g. environmental considerations, energy needs, economics) should MMS consider in deciding whether or not to approve a project? Compared to petroleum production, environmental impacts are negligible. Let EPA make environmental considerations. MMS should avoid make judgments about whether a venture will be profitable or not. What criteria should MMS consider for different competing projects (i.e. wind versus current) for the same site? There is no reason that a project could not multi-task and use wind energy with mariculture or other alternative applications at a single site.

**Program Area: Environmental Information, Management, and Compliance**

Description: Environmental management systems and review will be critical components of any activity in the new program. Environmental management systems must address all phases of planning and development, on-going operations, and removal of facilities associated with the new program. The new program will require identifying mitigation measures, monitoring programs, developing methods of validation and verification; establishing roles and responsibilities; and developing procedures for determining mitigation effectiveness, all of which are components of an environmental management system. The environmental management system will rely on an adaptive management strategy that gathers and uses information, including monitoring and evaluation of activities and their environmental consequences. Based on the results of this analysis and a determination of the effectiveness of the mitigation measures, revised or new mitigation measures could be implemented. The new regulations will require compliance with all pertinent environmental laws and regulations. General issues: Please provide information regarding:

K. Information requirements needed for environmental management systems for any project. Keep it simple. Only one type of aquaculture, raising fish in net-pens, has the "potential" to impact water quality from discharges. Other types of aquaculture, such as raising filter feeding organisms, clean the water. Other uses may generate other discharge of concern; however, they will be negligible compared to petroleum production-- which has not created serious environmental problems at the offshore locations.

L. Assessments and studies of risks and impacts (site-specific and cumulative) associated with offshore energy and alternate use projects. MMS should provide these documents. MMS is not in the business of managing fisheries and

M. Examples of best practices for environmental compliance, monitoring, and effectiveness being used in the U.S. and elsewhere. Japan, Ireland, and many other countries are moving net-pen aquaculture offshore to greater water depths, swifter currents, and further from land. Moving activities further offshore is an aquaculture BMP.

N. Balancing environmental considerations with national energy needs.
Specific questions:

12. What types and levels of environmental information should MMS require for a project? Keep it simple; EPA and NOAA will have their own environmental information requirements. MMS needs to collaborate with other agencies to keep environmental permitting simple and efficient.

13. What types of site-specific studies should MMS require? MMS has already performed extensive studies for petroleum production. Compared to oil and gas production, alternative uses produce fewer potential impacts. When should these studies be conducted? Who should be responsible for conducting these studies? If MMS requires them, they should be responsible.

14. What should be the goals and objectives of monitoring, mitigation, and enforcement? First, determine if alternative application operations pose threat to environment. If they do not, do not impose expensive monitoring criteria. Second, what agencies are out there that already manage the alternative applications? If MMS imposes monitoring, make it inexpensive and manageable. Make sure that it is insitu measurements; avoid environmental monitoring that requires samples to be sent inshore. It is ok if the government is paying for it. If they do not, avoid monitoring procedures that require inshore laboratory analysis like the 5 day BOD test. Onsite monitoring with environmental sensors are much cheaper. Water quality laboratories are 80 miles away over land and sea. Laboratory analysis cost about 5 times more than onsite measurements.

15. What types of impacts are of concern? From net-pens: DO, nitrate, and organic concentrations. Long term accumulation of detritus and organic material around net-pen facilities should not be a problem. Hurricanes re-suspend soils and detritus across the continental shelf and will sweep accumulated materials away. What are effective approaches for mitigating impacts? For net-pen aquaculture, move facilities offshore to greater depths and swifter currents. Also, placing artificial reef around net pen discharges will reduce nitrates and organics. Filter feeding organisms attached to artificial reefs feed on discharges. How can mitigation effectiveness and compliance with Federal environmental statutes be assessed? Removing platforms destroys essential fish habitat (EFH) and endangered species habitat (ESA). Leaving the structures in place complies with the spirit of federal environmental statutes.

16. What regulatory program elements lead to effective enforcement of environmental requirements? For aquaculture, ownership of lease will lead to effective self management.

17. How should environmental management systems be monitored (by the applicant, the MMS or by an independent third party)? Depends on who has to pay for it? If it is the applicant, then the applicant should monitor. What should be the MMS roles versus the roles of industry for ensuring appropriate oversight and governance? I believe MMS should manage oversight, however, if EPA or NOAA may have oversight on an activity, do not double oversight activities. Coordinate with agencies to make one entity to manage activities.

**Program Area: Operational Activities Description:**
**Operational activities** address all aspects of the program from the application through project assessment, development, installation, and production, to end of project life and removal of facilities. Inspections, monitoring, and enforcement are conducted throughout the entire project life. Risk analysis, engineering, studies, and research occur as needed.

General issues: Please provide information on:

O. Permitting pilot projects. Make it inexpensive and relatively quick to permit pilot projects.

P. Ensuring human health and safety on and adjacent to the project site. If the wells are plugged and hazardous waste removed, health and safety risks significantly decrease.

Q. Protecting environmental resources during construction, production, and removal. The construction of the offshore platforms in GOM and subsequent petroleum production have already proven to be quite benign. Removal of structure is damaging to the environment. The structure provides a steel substrate on which drifting organisms and fish settle. They are one of the most prolific ecosystems, by area, on the planet. Platform removal destroys EFH and ESH. Environmental resources would be saved if the platform where left in the water after their useful life in marine applications.

R. Identifying design and installation requirements associated with new projects and modification of existing facilities. After minerals production ceases, oil and gas operators should plug wells and remove hazardous waste.

S. Identifying production requirements as a component of diligence. This is a new industry and operators may not know their production levels. For aquaculture, it will be especially difficult. What are the production requirements for an artificial reef?

T. Managing end of life and facility removal. Once again, offshore platforms are EFH and ESH. If the alternative application venture fails, a federally subsidized non-profit trust fund should inherit liability and maintain as artificial reef.

U. Conducting oversight responsibilities (e.g., inspection, monitoring, enforcement). MMS should endorse self regulation. If MMS imposes enforcement, it should provide funding for federal oversight. The fledgling ventures will not be able to pay for expensive MMS inspection and monitoring.

V. Identifying technology assessment and research needs. MMS needs a long-term plan for the utilization of retired platforms for marine aquaculture, sustainable fisheries, sea farming and alternative energy sources. There is no comprehensive plan for the future of the new industries.

W. Preventing waste.
X. Conserving resources. Removing platforms destroys EFH and ESH.

Specific questions:

18. What options should MMS consider as alternatives to facility removal? MMS needs a clear-cut commitment to a trust fund for mariculture and ocean energy applications that will maintain retired platforms for permanent residence on the continental shelf as artificial reefs. Should the alternative use of retired platform fail, the Funds should provide for maintenance of navigational aids, mapping, “reefing” the structure and federal liability similar to that provided by the state rigs to reefs programs. This should reduce the cost of performance bonds required by MMS for alternative uses.
Are there unique issues (such as liability) associated with those options The main concern is residual liability. Oil and gas companies want to rid themselves of liability from long term care. Currently, when platforms pass from operator to operator, the original owner(s) are still liable for the well and platform until the structure is removed, wells plugged and the site is cleared. Major producers must trust that the new owners will remove the structures in a couple of years and eliminate hazards; otherwise, they will still have that liability on the books. They cannot justify

perpetual liability. MMS must create regulations that relieve oil and gas operators of all liability once they plug the wells and remove hazardous waste.

19. What engineering challenges should be considered when operating in an OCS environment?

20. What safety issues exist when operating an energy production facility on the OCS? Once the well is plugged and hazardous wastes are removed, safety issues decrease significantly. In addition, safety issues will be varying for different activities. Many types of marine aquaculture will not require the workers to man the deck of the platform. Activities will take place on a vessel.

21. How should operational activities be monitored (e.g. annual on-site inspections with verification of operating plans)? Is there an appropriate role for the applicant and independent third party certification agents? Describe existing models that could serve as a prototype inspection and monitoring program.

22. Are there special considerations that MMS should examine in developing an inspection program that covers a diverse set of renewable production facilities? If so, what are they?

**Program Area: Payments and Revenues Description:**

MMS has the responsibility to ensure a fair return to the United States for the use of any lease, easement, or right-of-way granted. The MMS is required to establish bonus bids, rentals, fees, royalties, or other payments to ensure that return. Additionally, cost recovery fees may be collected to compensate for the administrative costs of providing various services. Developing a payment and revenue structure, as well as appropriately designing fiscal terms applicable to energy and alternate use projects, requires additional information.

General issues: Please provide information on:

Y. Bonus bids.
Z. Rentals.
AA. Royalty terms.
BB. Fees, including cost recovery fees or other payments.
CC. Assessing value/benefits and impacts, Public, Private.
DD. Valuing leases, easements or rights-of-way.
EE. Comparable fiscal systems.
FF. Surety bonds.

Specific questions:
23. What should the payment structure be designed to collect? Should payments be targeted at charging for use of the seabed? Should payments try to capture the opportunity costs of other activities displaced by the activity? Should the payment structure be designed to capture a portion of the revenue stream, and if so, under what circumstances? Payments should be deferred until it is know if the activity is profitable.

24. Offshore renewable energy technologies are in their infancy. Should the payment structure be designed to encourage the development of these activities until the technologies are better established? Agree

25. What methods are used by the renewable energy industry to quantify the risk and uncertainty involved with estimating the size of a renewable energy resource, and evaluating its profitability?

26. What measures of profitability are commonly used as renewable energy investment decision criteria? How do bonus bids, rents, royalties, fees and other payment methods impact the profitability of these projects?

27. Are there economic models available to calculate the profitability of renewable energy proposals?

28. Increased reliance on renewable energy offers both economic and environmental benefits. What are the public benefits to society and do they differ from market driven benefits?

29. In section 8 (p) of the OCSLA as amended by Section 388 of the Energy Policy Act, the Secretary must require the holder of a lease, easement or right of way granted under that subsection to furnish a surety bond or other form of security. What options should MMS consider to comply with this requirement? Provide a federally funded trust fund to inherit retied platforms into a rigs to reefs program. This would reduce platform bond significantly.

Coordination and Consultation Description:

Section 8(p) of the OCSLA, as amended, includes several provisions relating to coordination and consultation with interested and affected parties. Those provisions call for coordinating and consulting with state governors or local government executives concerning activities that may affect them, developing and implementing regulations in consultation with certain Federal agencies and the governors of affected states, and ensuring that activities are carried out in a manner that provides for coordination with relevant Federal agencies. MMS views these requirements as essentially covering all aspects and phases of the non-oil and gas energy and alternate use program established by the Energy Policy Act of 2005.

Questions relating to coordination and consultation:

30. While MMS considers this ANPR an appropriate start at consultation with interested and affected parties, what other efforts could be undertaken at this early stage of program development?

31. Should a broad approach be taken to developing a program or should efforts be targeted to specific regions with commensurate coordination and consultation?

32. Would the establishment of Federal/state cooperatives for targeted areas be useful? Similar to the process for OCS oil and gas program formulation, should we solicit comments on which areas of the OCS should be included or excluded from the program? After establishing where there is consensus in support of program activities, should coordination and consultation efforts be directed to those areas? Conversely, should such efforts be curtailed or abandoned for areas recommended for exclusion?

33. What are the critical stages (e.g. site evaluation, application, competitive sale) for consultation with affected parties?

34. Should procedures for consulting with interested and affected parties be codified in the regulations? In general? In detail? What ever simplifies the process and reduces costs.

35. What processes can MMS use to provide for balance between consultations and the time and burden to the projects?

36. Are there specific aspects of the new ROW rule issued by the Bureau of Land Management that should be reviewed by MMS for consideration in its rulemaking? Yes the ROW model seems fairly stable and is long lasting and all encompassing. Need to review in detail.

MMS seeks responses to the questions, and comments as to which option(s) may be considered the most effective and efficient. After analyzing the comments received from this notice, MMS will

determine how to proceed. MMS encourages all interested parties to respond to these questions and to provide comments on any aspect of this program.